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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,518	08/16/2006	Erwin Hartmann	INA-44	7517
20311	7590	04/27/2009	EXAMINER	
LUCAS & MERCANTI, LLP 475 PARK AVENUE SOUTH 15TH FLOOR NEW YORK, NY 10016				PATEL, VISHAL A
ART UNIT		PAPER NUMBER		
3676				
			MAIL DATE	DELIVERY MODE
			04/27/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/596,518	HARTMANN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vishal Patel	3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 March 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3-25 is/are pending in the application.  
 4a) Of the above claim(s) 5 and 12 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 3,4,6-11,13,14 and 25 is/are rejected.  
 7) Claim(s) 15-24 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/13/09 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 25, 4, 6, 8-11 and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Lawer et al (US. 20040090013A1).

Lawer discloses a seal for an annular opening between members, the seal comprising: a first deflection ring concentrically arranged inside a second deflector ring and about a common axis of rotation; two radial fins formed on the first deflection ring, extending radial outward towards the second deflection ring without contacting the second deflection ring; a smooth, outwardly conical, inner lateral surface formed on the second deflection ring, radially opposing the two radial fins; a first collection channel delimited axially by the two radial fins and radially by the first deflection ring; a first annular cavity delimited axially by the two radial fins and delimited radially by the first collection channel and the inner lateral surface; and a second

collection channel delimited by a transverse fin extending axially from an inward radial limb of the second deflection ring, the inward radial limb axially inward of the first deflection ring, the second collection channel radially inward of the first collection channel and the two radial fins (see figure below).

Regarding claim 3: The first cavity has presents a radially innermost bottom whose radial distance to the second deflector ring is greater than the axial distance between the adjacent radial fins that bound the cavity (figure below).

Regarding claim 4: A first radial fin of the two radial fins is arranged further axially outward than a second of the two radial fins at the seal and at least partially closes off the seal with respect to an environment surrounding the seal in the axial direction is radially longer than the second radial fin (figure below).

Regarding claim 6: The first cavity is bound by annular surfaces that radially increase in distance from one another towards the second deflector ring (figure below).

Regarding claim 7: The annular surface is inclined at an angle with respect to the axis of rotation (figure below).

Regarding claim 8: The first cavity merges axially into a radial first annular gap between a first radial fin of the two radial fins and the second deflector ring and into a radial second annular gap between a second radial fin of the two radial fins and the second deflector ring (figure below).

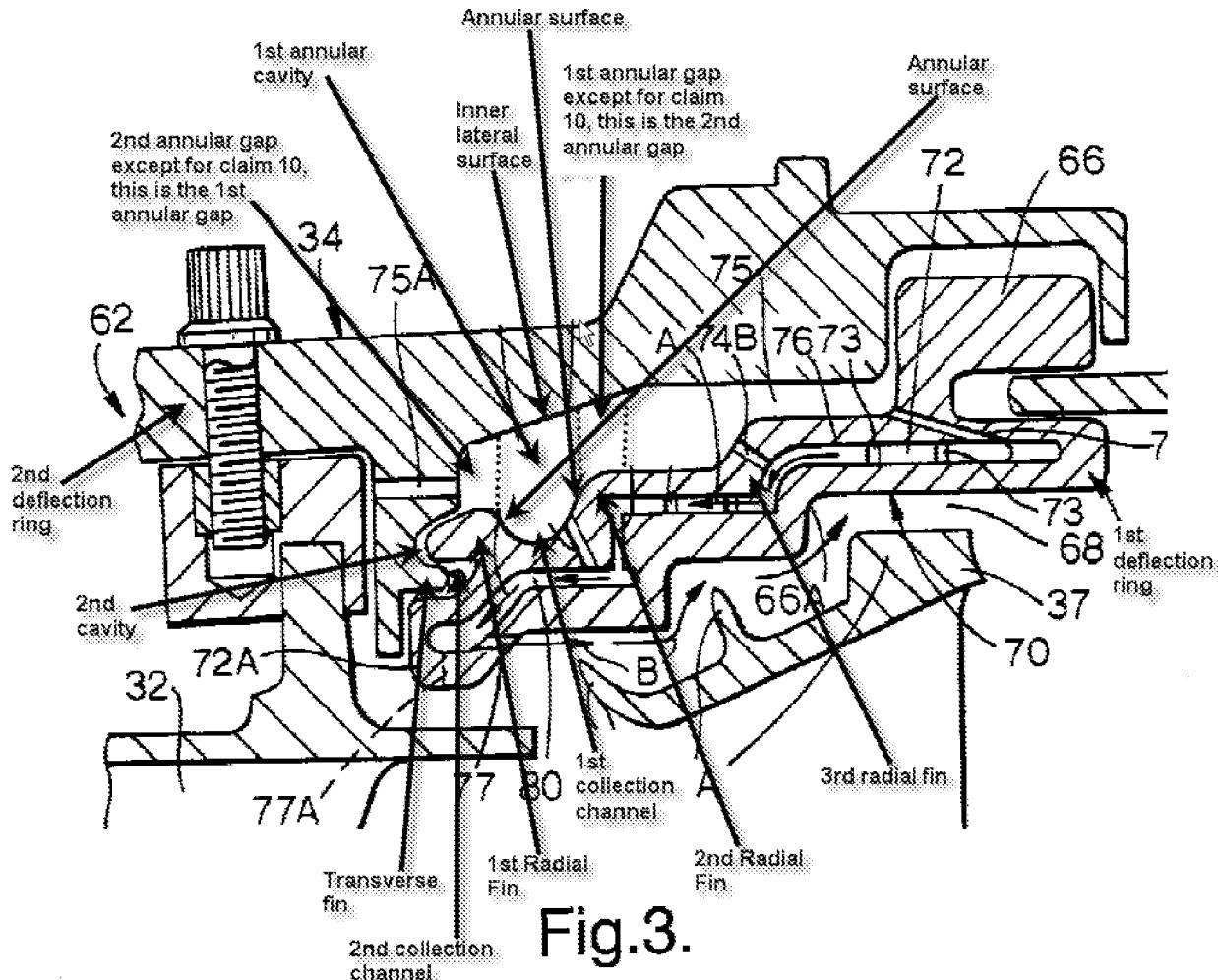
Regarding claim 9: The first annular gap on an axially outer side of the first radial fin between the first deflector ring and the second deflector ring opens out freely into an environment axially surrounding the seal (figure below).

Regarding claim 10: The first annular gap is radially narrower than the second annular gap.

Regarding claim 11: The second annular gap runs radially closer to the axis of rotation than the first annular gap (figure below).

Regarding claim 13: The second annular gap opens out into a second cavity, the second cavity, which is annular in form, being at least partially enclosed by the first deflector ring and the second deflector ring (figure below).

Regarding claim 14: The second radial fin and a third radial fin, at the first deflector ring, lie freely axially opposite one another, separated from one another by the second cavity (figure below).



## ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawer.

Lawer discloses the claimed invention except that the distance is a ratio of 1.4 times the axial distance and the angle is from 70° to 85°. Discovering an optimum range of a result effective variable involves only routine skill in the art. In re Kulling, 895 F.2d 1147, 14 USPQ 2d 1056. Without the showing of some unexpected result. Since applicant has not shown some unexpected result the inclusion of this limitation is considered to be a matter of choice in design. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the distance to be 1.4 times the axial distance and angle to be between 70° to 85° as a matter of design choice.

***Response to Arguments***

6. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

7. Claims 15-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vishal Patel whose telephone number is 571-272-7060. The examiner can normally be reached on 6:30am to 8:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer H. Gay can be reached on 571-272-7029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. P./  
Primary Examiner, Art Unit 3676

/Vishal Patel/  
Primary Examiner, Art Unit 3676